

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:NER:MAN:TL-N-789-00  
FPetrino

date:

to: Chief Examination Division, Manhattan  
Attn: Kris Naraine, International Examiner

from: District Counsel, Manhattan

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subject: Taxpayer: [REDACTED]  
EIN: [REDACTED]

DISCLOSURE STATEMENT

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This memorandum responds to your request of February 18, 2000 for written advice concerning the proper taxpayer to execute a Form 872, Consent to Extend the Statute of Limitations on Assessment, in connection with [REDACTED]'s [REDACTED] Form 1120F. In brief, based on the facts you've provided us, we believe that [REDACTED] (" [REDACTED] ") qualifies as the successor in interest by merger of [REDACTED], and as such, [REDACTED] is the appropriate party to execute a Form 872 for the Forms 1120F.

**ISSUES**

Who is the proper party to execute the Form 872, Consent to Extend the Time to Assess Tax, with respect to [REDACTED]?

**CONCLUSION**

[REDACTED] is the appropriate party to execute a Form 872 for the Forms 1120F.

**FACTS**

The paragraphs below describes the facts in this case as they were conveyed to us. If the facts are different from those stated herein, our analysis and conclusions may change. If you discover or obtain additional facts, or if the facts herein are inaccurate, please contact us immediately to discuss this advice.

[REDACTED], a [REDACTED] Corporation, was a foreign corporation doing business in New York State and generated income which was effectively connected with a U.S. trade or business. On [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] merged and became [REDACTED].

You requested that we assume that [REDACTED] is the successor in interest by merger to [REDACTED] and thus, is liable for all of the obligations of [REDACTED], in accordance with [REDACTED]'s annual report, which stated that [REDACTED] contributed all of its assets and liabilities into [REDACTED]. [REDACTED] filed a Form 1120F for the period beginning [REDACTED] and ending [REDACTED] and [REDACTED] filed a Form 1120F for the period of [REDACTED] through [REDACTED].

**DISCUSSION**

Treas. Reg. § 1.6012-2(g) requires that any foreign corporation which is engaged in a trade or business in the United States at any time during the taxable year make a return on Form 1120F. Accordingly, both [REDACTED] and [REDACTED] filed Forms 1120F for a short year for [REDACTED], the year of the merger. Furthermore, since you have indicated that a valid merger occurred and that [REDACTED] became primarily liable for the liabilities of [REDACTED], [REDACTED] may execute a Form 872 on behalf of [REDACTED] for the [REDACTED] short tax year.

In accordance with the facts you provided to us, [REDACTED] is the successor interest to [REDACTED]. Therefore, the name of the taxpayer appearing on the Form 872 should be as follows:

" [REDACTED] (E.I.N. [REDACTED]), as successor  
in interest to [REDACTED] (E.I.N. [REDACTED]) "

Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form. In any event, you should document your actions in this regard in the case file.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 4541.1(2) requires that you use Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) requires you to use of Letter 929(DO) to return the signed Form 872 to the taxpayer. You should retain dated copies of both letters in the case file as directed. When you receive the signed Form 872 from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or the equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would be used to establish the existence of the agreement.

If you have any questions concerning our advice, please contact Frederick Petrino at (212) 264-1595, ext. 294.

LINDA R. DETTERY  
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